



reduction of defendant's sentence within the revised guideline range. Accordingly, defendant's motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c) (Dkt. # 38) is **granted**.

As to defendant's request for a downward variance, this Court is without authority to grant such a motion. In consideration of a § 3582(c) motion, the district court is bound by USSG §1B1.10, which does not permit a modified sentence that falls below the amended guideline range. Therefore, a reduction in sentence below the amended sentencing guidelines range at a § 3582 sentence modification proceeding is impermissible because it would be inconsistent with the policy statement in §1B1.10. See United States v. Rhodes, 549 F.3d 833, 849 (10th Cir. 2008), cert. denied, 129 S.Ct. 2052 (U.S. Apr. 27, 2009).

**IT IS THEREFORE ORDERED** that the Joint Motion for Reduction of Sentence (Dkt. # 38) is **granted**; defendant's request for a downward variance is **denied**.

**IT IS FURTHER ORDERED** that the term of imprisonment imposed in Count Two is reduced to a term of 41 months.

**IT IS FURTHER ORDERED** that all other terms and provisions of the judgment are unchanged and shall remain the same as originally entered.

**DATED** this 30th day of July, 2009.

  
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CLAIRE V. EAGAN, CHIEF JUDGE  
UNITED STATES DISTRICT COURT